

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

WILLIAM J. REHBERG, JAMES L. HALMO,
AND MARILYN K. SANDERS

Petitioner,

v.

PIERCE COUNTY,

Respondent.

Case No. 13-3-0010

FINAL DECISION AND ORDER

SYNOPSIS

Pierce County adopted Ordinance No. 2013-30s2 recodifying and consolidating various development regulations. Petitioners challenged numerous provisions. The Board found many of Petitioners' issues were time-barred, as the regulations had merely been recodified without amendment. The Board remanded elements of the signage regulation to ensure protection of rural character as required by RCW 36.70A.070(5) and RCW 36.70A.030(15). Other issues were dismissed.

I. PROCEDURAL BACKGROUND

The challenged action is Pierce County's adoption of Ordinance No. 2013-30s2 (the Ordinance) on September 17, 2013, and published on October 9, 2013, with an effective date of November 1, 2013. Following filing of the Petition for Review (PFR) in this case, the County passed Emergency Ordinance No. 2013-85 delaying the effective date of the challenged ordinance until June 1, 2014. The Parties subsequently filed their prehearing briefs and exhibits. The Hearing on the Merits was convened on March 26, 2014, at the Pierce County Public Services Building. Present for the Board were Cheryl Pflug, presiding officer, Margaret Pageler, and Raymond Paoella. Petitioners appeared *pro se* through their

1 representative, James L. Halmo. The County appeared by its attorney, M. Peter Philley.
2 Mary Ann Pennington of Pennington Court Reporting provided court reporting services.

3 The hearing provided the Board an opportunity to ask questions clarifying important
4 facts in the case and providing better understanding of the legal arguments of the parties.
5

6 **II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF,** 7 **AND STANDARD OF REVIEW**

8 Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations,
9 and amendments to them, are presumed valid upon adoption.¹ This presumption creates a
10 high threshold for challengers as the burden is on the petitioners to demonstrate that any
11 action taken by the County is not in compliance with the GMA.²
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13 The Board is charged with adjudicating GMA compliance and, when necessary,
14 invalidating noncompliant plans and development regulations.³ The scope of the Board's
15 review is limited to determining whether a County has achieved compliance with the GMA
16 only with respect to those issues presented in a timely petition for review.⁴ The GMA directs
17 that the Board, after full consideration of the petition, shall determine whether there is
18 compliance with the requirements of the GMA.⁵ The Board shall find compliance unless it
19 determines that the County's action is clearly erroneous in view of the entire record before
20 the Board and in light of the goals and requirements of the GMA.⁶ The challenged portion is
21 clearly erroneous if the Board has a firm and definite conviction that a mistake occurred.⁷
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25 ¹ RCW 36.70A.320(1) provides: [Except for the shoreline element of a comprehensive plan and applicable
26 development regulations] comprehensive plans and development regulations, and amendments thereto,
27 adopted under this chapter are presumed valid upon adoption.

28 ² RCW 36.70A.320(2) provides: [Except when city or county is subject to a Determination of Invalidity] the
29 burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this
30 chapter is not in compliance with the requirements of this chapter.

31 ³ RCW 36.70A.280; RCW 36.70A.302.

32 ⁴ RCW 36.70A.290(1).

⁵ RCW 36.70A.320(3).

⁶ *Id.*

⁷ *City of Arlington v. CPSGMHB*, 162 Wn.2d 768, 778, 193 P.3d 1077 (2008) (Citing to *Dept. of Ecology v. PUD District No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 1993); See also, *Swinomish Tribe*,

1 In reviewing the planning decisions of cities and counties, the Board is instructed to
2 recognize “the broad range of discretion that may be exercised by counties and cities” and
3 to “grant deference to counties and cities in how they plan for growth.”⁸ However, a county’s
4 actions are not boundless; their actions must be consistent with the goals and requirements
5 of the GMA.⁹

6 Thus, the burden is on Petitioners to overcome the presumption of validity and
7 demonstrate that the challenged action taken by the County is clearly erroneous in light of
8 the goals and requirements of the GMA.
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10 III. BOARD JURISDICTION

11 The challenged ordinance was published on October 9, 2013, and the Petition for
12 Review filed on October 30, 2013. The Board finds the Petition for Review was timely filed
13 within 60 days as required by RCW 36.70A.290(2). The Board finds the Petitioner has
14 standing to appear before the Board, pursuant to RCW 36.70A.280(2)(b).¹⁰
15

16 The Board finds it has jurisdiction over the subject matter of the petition pursuant to
17 RCW 36.70A.280(1).
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20 *et al. v. WWGMHB*, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007); *Lewis County v. WWGMHB*, 157 Wn.2d
488, 497-98, 139 P.3d 1096 (2006).

21 ⁸ RCW 36.70A.3201 provides, in relevant part: “In recognition of the broad range of discretion that may be
22 exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the
23 boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements
24 and goals of this chapter. Local comprehensive plans and development regulations require counties and cities
25 to balance priorities and options for action in full consideration of local circumstances. The legislature finds that
26 while this chapter requires local planning to take place within a framework of state goals and requirements, the
27 ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and
28 implementing a county's or city's future rests with that community.”

29 ⁹ *King County v. CPSGMHB*, 142 Wn.2d 543, 561, 14 P.2d 133 (2000) (Local discretion is bounded by the
30 goals and requirements of the GMA). See also, *Swinomish*, 161 Wn.2d at 423-24. In *Swinomish*, as to the
31 degree of deference to be granted under the clearly erroneous standard, the Supreme Court has stated: The
32 amount [of deference] is neither unlimited nor does it approximate a rubber stamp. It requires the Board to give
the [jurisdiction's] actions a “critical review” and is a “more intense standard of review” than the arbitrary and
capricious standard. *Id.* at 435, Fn. 8.

¹⁰ RCW 36.70A.280(2): “A petition may be filed only by: (a) The state, or a county or city that plans under this
chapter; (b) a person who has participated orally or in writing before the county or city regarding the matter on
which a review is being requested”

RCW 36.70A.210(6) provides: “Cities and the governor may appeal an adopted countywide planning policy to
the growth management hearings board within sixty days of the adoption of the countywide planning policy.”

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IV. PRELIMINARY MATTERS

Motion to Supplement

In Respondent Pierce County's Prehearing Response Brief, the County moved to supplement the record pursuant to WAC 242-03-565(1)¹¹ with a Community Plans map showing the designated planning areas for all eleven of Pierce County's Community Plans.¹² The Board found that the proposed exhibit was helpful to the Board in visualizing the areas covered by community plans and, therefore, of substantial assistance to the Board in reaching its decision as required by RCW 36.70A.290(4).

The Pierce County Community Plans map was admitted orally as PCC #78.

Motion for Partial Dismissal

At the outset of the hearing, the Board heard argument on Respondent's Motion to Dismiss all legal issues where the only change made by the Ordinance was either a recodification of existing code by re-numbering, re-sequencing, or relocating existing regulations or where no substantive change to the amended development regulation was made.

GMA Compliance of Comprehensive Plan and Sub-area Community Plans

Petitioner cites *Carlson v. San Juan County*¹³ and *1000 Friends v. Thurston County*¹⁴ for the proposition that the Board has present authority to review the entire Pierce County Comprehensive Plan.¹⁵ In contrast to *Carlson*, in which a County had just adopted its Comprehensive Plan, and *1000 Friends*, in which a County was required by legislative mandate to update its Comprehensive Plan, the case before us challenges a voluntary

¹¹ "A motion to supplement the record shall be filed by the deadline in the prehearing order The Board may allow a later motion for supplementation on rebuttal or for other good cause shown."

¹² Respondent's Prehearing Response Brief at 4.

¹³ *Carlson v. San Juan County*, WWGMHB Case No. 99-2-0008, Order Denying Motion to Dismiss (May 3, 1999).

¹⁴ *1000 Friends v. Thurston County*, WWGMHB Case No. 05-2-0002, Order on Motion to Dismiss (April 21, 2005) at 6-9.

¹⁵ Petitioners' Prehearing Brief at 2.

1 consolidation of the County's Comprehensive Plan and development regulations. Crucially,
2 both Petitioners and the County agree that **the challenged action did not amend the**
3 **Pierce County Comprehensive Plan or any of its eleven Community Plans.**¹⁶ As
4 explained supra,¹⁷ the Legislature has established a deadline by which those challenges
5 that a jurisdiction is not in compliance with the requirements of the GMA must be filed. The
6 GMA's requirement that a PFR be filed within 60 days of publication of the challenged
7 legislative action has been strictly construed not only by the Board but also by the courts on
8 numerous occasions.¹⁸ Because it is uncontested that the Ordinance made no changes to
9 the Pierce County Comprehensive Plan or any of the sub-area Community Plans,¹⁹
10 Petitioners' challenge to Pierce County's Comprehensive Plan or Community Plans for
11 compliance with the GMA is untimely. The Board finds that those portions of issues alleging
12 noncompliance with RCW 36.70A.070(5),²⁰ RCW 36.70A.020(2),²¹ RCW 36.70A.020(10),²²
13 RCW 36.70A.177,²³ RCW 36.70A.020(1),²⁴ and RCW 36.70A.020(11)²⁵ must be dismissed.

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16 Respondent's motion for partial dismissal is granted as to Petitioners' challenges that
17 the County's Comprehensive Plan or the Community Plans fail to comply with the GMA.
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20 ¹⁶ Petitioners' response to Board Member Paoella, Hearing on the Merits (March 26, 2014); Respondent's
21 Prehearing Response Brief at 2, 15.

22 ¹⁷ RCW 36.70A.290(2) requires challenges to be filed within 60 days.

23 ¹⁸ See e.g., *Thurston County v. WWGMHB*, 164 Wn.2d 329 (2008) (Noting the Legislature's recognition of the
24 importance of finality in limiting the time for challenging a comprehensive plan to 60 days); *Torrance v. King*
25 *County*, 136 Wn.2d 783 (1998) (Stating that the GMA requires a petition for review "must be filed within 60
days of the date the local government took the challenged action."); *Cave/Cowan v. Renton*, CSPGMHB Case
No. 07-3-0012, Order on Motions (April 30, 2007) and Order on Motions (May 24, 2007).

26 ¹⁹ Petitioners' response to Board Member Paoella, Hearing on the Merits (March 26, 2014); Respondent's
Prehearing Response Brief at 2, 15.

27 ²⁰ Issue IA(1) Petitioners' Prehearing Brief at 6; Issue IA(2) Petitioners' Prehearing Brief at 12; Issue IB(1)
Petitioners' Prehearing Brief at 13, 14, 16; Issue IB(3), Petitioners' Prehearing Brief at 16, 17; Issue IB(3),
28 Petitioners' Prehearing Brief at 16, 17; Issue IIA Petitioners' Prehearing Brief at 18; Issue IID(1) Petitioners'
Prehearing Brief at 25; Issue IV, Petitioners' Prehearing Brief at 30.

29 ²¹ Issue IB(1) Petitioners' Prehearing Brief at 14; Issue IB(3) Petitioners' Prehearing Brief at 16; Issue IIA
30 Petitioners' Prehearing Brief at 18; Issue IID(1) Petitioners' Prehearing Brief at 25.

31 ²² Issue IB(3) Petitioners' Prehearing Brief at 16; Issue IIA Petitioners' Prehearing Brief at 18.

32 ²³ Issue IIB Petitioners' Prehearing Brief at 22-24.

²⁴ Issue IID(2) Petitioners' Prehearing Brief at 25-26.

²⁵ *Id.*

1 Issues IIA, IIB, IIIA, IIIB and IIIC and those portions of Issues IA and IVE alleging
2 GMA noncompliance not based on inconsistency with the County's Comprehensive Plan are
3 dismissed.

4 Petitioners have abandoned Issue IVA.²⁶ Issue IVA is dismissed.
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6 **GMA Compliance of Development Regulations**

7 While the Board agrees with Petitioners that the County may have "missed an
8 opportunity to remove inconsistencies" with various GMA goals,²⁷ Petitioners have not
9 provided any evidence that the County is presently required by statute to avail itself of such
10 an opportunity. As the Board noted in *Edgar v. Lake Burien*,²⁸ failure to fulfill an expressed,
11 explicit mandate – either from the GMA or the jurisdiction's own Comprehensive Plan – that
12 requires revision of the Plan in order to achieve compliance with the GMA would be subject
13 to review.²⁹ However, argument is needed to demonstrate that the County was so obligated
14 as part of adoption of the challenged ordinance.³⁰ No argument has been developed to
15 identify specific GMA deadlines or new requirements that require the County to resolve
16 alleged inconsistencies at this time. Throughout their briefs, Petitioners raise concerns for
17 GMA issues, particularly preservation of rural character, that are commendable and well-
18 founded in many fundamental requirements of the GMA, but their arguments fail to provide
19 the linkage proving the County has a present obligation to revise its Plan or regulations. The
20 Board is not persuaded by Petitioners' argument that the County could or should have done
21 more in light of GMA goals.
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23 The Board concurs with the County that, to the extent the Ordinance merely
24 recodifies existing regulations, the Petitioners' challenge must be dismissed as time-barred.
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30 ²⁶ Petitioners' Prehearing Brief at 30.

31 ²⁷ Petitioners' argument at Hearing on the Merits (March 26, 2014).

32 ²⁸ *Edgar, et al. v. City of Burien*, Case No. 11-3-0004, Order on Motions (May 12, 2011) at 7.

²⁹ *Id.*

³⁰ *Id.*

V. ISSUES AND DISCUSSION

The Ordinance is the last of four “Development Regulations Code Consolidation” reviews enacted pursuant to County Resolution No. 2008-77s.³¹ The parties agree that the Ordinance did modify some existing development regulations both within and outside of the community planning areas.³² The County urges that the intent of the consolidation process was to “streamline the development and review process,”³³ including addressing the slightly varying standards between various community plan areas,³⁴ and that there “was no substantive change to the amended development regulation.”³⁵ Petitioners contend that the challenged ordinance went beyond consolidation and introduced significant regulatory changes inconsistent with, or in violation of, the GMA. In some cases, the GMA violation alleged is that the development regulations are inconsistent with the Comprehensive Plan, including some Community Plans. Thus a threshold consideration is whether a particular development regulation was changed by adoption of Ordinance No. 2013-30s2. Just as the Comprehensive Plan and Community Plans are not subject to review because they are not amended by Ordinance No. 2013-30s2, so also development regulations that were merely restated or recodified are not now properly subject to review.

Although Petitioners describe multiple undesirable outcomes that may result from changes made to development regulations, their arguments largely rest on the assertion that the County has failed to provide a written record showing that the new regulations guarantee outcomes consistent with GMA planning goals.³⁶ Petitioners have turned the burden of proof on its ear. First, it is the Petitioners who have the burden to prove inconsistency. The County does not need to prove that its regulations are consistent because its action is presumed valid.

³¹ Petitioners’ Prehearing Brief at 2-3.

³² Respondent’s Prehearing Response Brief at 2; Petitioners’ Prehearing Brief at 3.

³³ Respondent’s Prehearing Response Brief at 1.

³⁴ *Id.* at 2.

³⁵ *Id.* at 4.

³⁶ RCW 36.70A.070(5)(a) requires a written record describing how the GMA goals are harmonized as part of a County’s adoption of the rural element of the comprehensive plan. The requirement does not apply to adoption or amendment of development regulations as contained in the Ordinance.

1 Secondly, the inconsistency which must be shown is that the modified development
2 regulations are inconsistent or will fail to implement the Comprehensive Plan. Pursuant to
3 WAC 365-196-800,³⁷ the Board's review of development regulations changed by the
4 Ordinance is limited to whether or not the new regulations are consistent with and
5 implement the County's Comprehensive Plan. As stated in WAC 365-196-800:

6 "Implement" in this context has a more affirmative meaning than merely
7 "consistent." See WAC 365-196-210. "Implement" connotes not only a lack
8 of conflict but also a sufficient scope to fully carry out the goals, policies,
9 standards and directions contained in the comprehensive plan.

10 **Signage Regulations – Issues IA(1), IA(2), IB(1), IB(2), IB(3), IC, IVE**

11 Petitioners contend the County's recodified signage regulations violate the GMA by
12 creating inconsistencies with the Comprehensive Plan and Community Plans, contrary to
13 GMA goals and requirements. Petitioners rely on two lines of reasoning:

14 First, rural character in the GMA has a visual element. Rural character is defined as
15 patterns of land use where natural landscapes and vegetation predominate over the built
16 environment and where traditional visual landscapes are provided. RCW 36.70A.030(15)(a)
17 and (c). The rural element of a county plan must contain measures governing development
18 that "assure visual compatibility" with surrounding rural areas. RCW 36.70A.070(5)(c)(ii).
19 The Board notes that its decision in *North Clover Creek* limiting electronic messaging signs
20 in the Graham Community relied on these GMA provisions and on the specific goals and
21 policies of the adopted Graham Community Plan.³⁸

22 Petitioners submitted numerous exhibits in their challenge to the present Ordinance
23 demonstrating the visual incompatibility of electronic message signs with rural landscapes
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30 ³⁷ "Development regulations under the act are specific controls placed on development or land use activities by
31 a county or city. Development regulations must be consistent with and implement comprehensive plans
32 adopted pursuant to the act."

³⁸ *North Clover Creek, et al. v. Pierce County*, Case No. 10-3-0003c, Final Decision and Order (August 2,
2010) at 55-57.

1 and scenic vistas.³⁹ However, where prior regulations were merely recodified, Petitioners'
2 objections are time-barred.

3 Secondly, Petitioners contend that proliferation of advertising is “visual urban sprawl”
4 and thus contrary to GMA Goal 2.⁴⁰ “Urban growth” is defined in the GMA as “growth that
5 makes intensive use of land for the location of buildings, structures, and impermeable
6 surfaces to such a degree as to be incompatible with the primary use of land for the
7 production of food . . . [or] . . . rural uses” RCW 36.70A.030(19) (emphasis added). The
8 focus is on development of land. Similarly, RCW 36.70A.030(15)(e) and 36.70A.070(5)(c)(iii)
9 discourage “inappropriate conversion of undeveloped land into sprawling, low-density
10 development in the rural area.”⁴¹ (emphasis added). The Board is not persuaded that
11 placement or type of signage translates into “urban sprawl.”
12

13 Issue IB(1) is dismissed as to Graham’s rural area.

14 The Board finds Petitioners have not met their burden of demonstrating the
15 Ordinance amended the Graham Community Plan’s regulations limiting electronic signage
16 in the Graham rural area. Where the regulations are unchanged, they are not subject to
17 challenge.
18

19 Issue IA(1) is dismissed.

20 Petitioners contend the Ordinance amends sign restrictions in the Graham Plan
21 area’s “step-down” urban growth area. However, the GMA contains no “visual compatibility”
22 requirement for urban areas. The amendment to the signage regulation in the urban growth
23 area in Graham’s community and other community plan areas is within the County’s
24 discretion.
25

26 Issue IA(2) is dismissed.

27 Petitioners contend the Ordinance provisions amending readerboards to electronic
28 message signs in the non-community plan rural areas allows a proliferation of visually
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30 ³⁹ See, e.g., Petitioners’ Exhibit 29, Enclosure F (PPC #65), Exhibit 37 (PCC #78).

31 ⁴⁰ RCW 36.70A.020(2) “Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into
32 sprawling, low-density development.”

⁴¹ See *North Clover Creek*, Case No. 10-3-0003c, Final Decision and Order (August 2, 2010) at 61.

1 incompatible development. Petitioners argue the deletion of prior regulations on
2 readerboards – 18B.20.120 and 18B.20.125 – and general allowance of electronic message
3 signs – 18B.20.080 – together with changed definitions of “readerboard” and other signs
4 “open the door wide” for digital signage regardless of location or land use classification.⁴²

5 The County responds that electronic signage was not explicitly mentioned in other
6 community plans and the rest of the rural area and therefore it was implicitly allowed. The
7 Board notes this question was raised and ruled on by the Board in the *North Clover Creek*
8 decision less than four years ago.⁴³ In *North Clover Creek*, one of the issues raised by
9 opponents to electronic billboards in the Graham Community was the argument that such
10 signage was not generally allowed in other Pierce County rural areas and that the
11 comprehensive plan called for consistency among rural community plans. County staff
12 provided the Planning Commission with a matrix showing which community plans allowed
13 electronic message boards. The staff reported:

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16 **[E]lectronic message signs, except for time/temperature signs, are**
17 **widely prohibited in rural Pierce County. The Pierce County Code for**
18 **Non-community Plan Areas (more than 50% of the County) allows**
19 **reader board signs, with certain restrictions, but not electronic**
20 **message signs.** As the Supplemental Staff Report indicated, the
21 Community Plans for Frederickson, Gig Harbor Peninsula, and Key
22 Peninsula allow only time/temperature signs. The Mid-County and South
23 Hill plans prohibit electronic signs, except temporary traffic control signs in
24 the right-of-way. Upper Nisqually Valley – like Graham, a largely rural
25 community – prohibits such signs. The Alderton-McMillin Plan prohibits
26 “trailing electronic signs;” the Parkland-Spanaway-Midland plan prohibits
27 trailing signs with pulsing, streaming, or frequently-changing text; and the
28 Browns Point-Dash Point Plan allows electronic message boards only at the
29 Town Center complex or in other limited uses. **In sum, electronic**
30 **message boards are almost uniformly rejected in the community plans**
31 **for Pierce County, especially for the County’s rural areas.**⁴⁴ (emphasis
32 added).

⁴² Petitioners’ Prehearing Brief at 8.

⁴³ *North Clover Creek*, Case No. 10-3-0003c, Final Decision and Order (August 2, 2010) at 58-59.

⁴⁴ *Id.* at 54 (citing Staff Supplemental Report No. 2 (July 15, 2009)).

1 The Board concluded in *North Clover Creek* that “as documented above” “the
2 County’s regulations for non-community plan rural areas [result] in prohibiting or greatly
3 restricting electronic message signs.”⁴⁵ Thus the County’s analysis in 2009 was that
4 electronic signs in rural areas were prohibited because they were not expressly allowed.
5 Now the County argues that under those prior regulations, electronic message boards were
6 allowed because they were not specifically prohibited and therefore the new signage
7 regulations are not a challengeable amendment. The Board is not persuaded.
8

9 The Board finds the Ordinance provisions allowing electronic message boards in the
10 non-community plan rural areas are an amendment to prior regulations, not a mere
11 recodification. While *pro se* Petitioners’ legal argument is not completely cohesive, they cite
12 to the GMA requirements to protect the visual quality of rural character and provide exhibits
13 demonstrating the signage blight they oppose. The Board finds that if the Comprehensive
14 Plan has not been amended, then it must be the same as it was under the *North Clover*
15 *Creek* decision.⁴⁶ Pursuant to RCW 36.70A.130(1)(d), development regulations must be
16 consistent with the Comprehensive Plan. Therefore, the Ordinance violates RCW
17 36.70A.130(1)(d). The Board is left with a firm and definite conviction that a mistake has
18 been made.
19

20 Local governments have considerable discretion in determining how to respond to
21 challenges and opportunities presented by digital advertising within the bounds of the goals
22 and requirements of the GMA. The Board remands the Ordinance to the County to bring its
23 signage regulations for the non-community plan rural areas into compliance with the rural
24 character provisions of the GMA. (Issues IB(2), IB(3), IC, and IVE).
25

26 27 **Variance Authority – Issue IB(1) and IVD**

28 Petitioners argue that requiring a Land Use Advisory Commission review of only
29 those variance requests exceeding 20% constitutes “unbridled discretionary” authority which
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32 ⁴⁵ *Id.* at 59.

⁴⁶ See *North Clover Creek*, Case No. 10-3-0003c, Final Decision and Order (August 2, 2010) at 58.

1 can contribute to sprawl.⁴⁷ The County responds that the PALS Director's variance authority
2 is limited to variance requests not exceeding 20%. Further, previous limiting criteria were
3 retained and merely renumbered from PCC 18B.10.040.B4 to PCC 18B.10.080C.⁴⁸ The
4 Board finds that the criteria remain identical and that a 20% variance is not unbounded
5 discretion. Petitioners have not carried their burden to prove that allowing such limited
6 discretionary authority is inconsistent with the Pierce County Comprehensive Plan.
7

8 Issue IB(1) and IVD are dismissed.

9
10 **Agricultural Lands – Issue IIC**

11 Petitioners argue that PCC 18A.35.040B allows open space lands to be used for
12 nonagricultural purposes and therefore conflicts with PCC 19A.40.070C of the County's
13 Comprehensive Plan.⁴⁹ The County responds that the language allowing open space lands
14 to be used for nonagricultural purposes (such as golf courses) pre-existed as
15 PCC18A.35.050 and was only renumbered. The Board agrees with the County that
16 provisions which remain unchanged are not ripe for review.
17

18 Issue IIC is dismissed.

19
20 **Clustering – Issue IID**

21 Petitioners argue that failure to limit the "clustering of clusters" in the Reserve 5 land
22 use zone violates the Pierce County Comprehensive Plan by not restricting urban sprawl
23 and failing to conserve land for future urban development.⁵⁰ Petitioners also worry that the
24 County has not adopted a monitoring plan.⁵¹ The County responds that the actual densities
25 in the recodified tables are not changed except to expand the ARL language countywide to
26 provide direction for areas where maximum density is currently allowed without restriction.⁵²
27 Petitioners present no evidence that the current Comprehensive Plan requires a monitoring
28

29 ⁴⁷ Petitioners' Prehearing Brief at 13-14; Petitioners' Reply Brief at 11-13.

30 ⁴⁸ Respondent's Prehearing Response Brief at 11.

31 ⁴⁹ Petitioners' Prehearing Brief at 24.

32 ⁵⁰ *Id.* at 25.

⁵¹ Petitioners' Prehearing Reply Brief at 14.

⁵² Respondent's Prehearing Response Brief at 11-12.

1 plan.⁵³ The Board finds Petitioners have not met their burden to show that the reformatted
2 tables are inconsistent with the County's Comprehensive Plan.

3 Issue IIID is dismissed.
4

5 **Urban Setbacks – Issue IVB**

6 The parties agree that the Ordinance amended County development regulations by
7 reducing setback requirements in many instances.⁵⁴ Petitioners argue that the previous
8 requirements were preferable and the Board concedes that Petitioners raise a good point.
9 However, the Board finds that Petitioners have not met their burden to show how the
10 amended setbacks are inconsistent the County's Comprehensive Plan.

11 Issue IVB is dismissed.
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14 **Parking – Issue IVC**

15 Petitioners allege that allowing less than minimum parking in the case of “an
16 expansion of or change of use in an existing structure where on-street parking has
17 historically been the majority or only parking available”⁵⁵ is inconsistent with PCC
18 18A.05.020(2)⁵⁶ because it introduces a vague term (*i.e.*, “historical”) and may reduce
19 flexibility for future growth.⁵⁷ The Board agrees with the County that Petitioners have failed
20 to meet their burden of showing how this change is inconsistent with the County's
21 Comprehensive Plan.
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23 Issue IVC is dismissed.
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28 ⁵³ Petitioners rely on *Suquamish Tribe, et al., v. Kitsap County*, CPSGMHB Case No. 07-3-0019c, Final
29 Decision and Order (August 15, 2007), but the monitoring proposal there was based on circumstances unique
30 to that county.

⁵⁴ Respondent's Prehearing Response Brief at 18; Petitioner's Prehearing Brief at 30.

⁵⁵ PCC 18A.35.040; Exhibit 1, Exhibit D of Ordinance at 34.

31 ⁵⁶ “Purpose. ... (2) To provide guidance for the future development of Pierce County so development may
32 occur in an orderly and predictable fashion;”

⁵⁷ Petitioners' Prehearing Brief at 32; Petitioners' Reply Brief at 23.

1 **Invalidity – Issue V**

2 The majority of Petitioners' issues having been dismissed and the County having
3 County passed Emergency Ordinance No. 2013-85 delaying the effective date of the
4 challenged Ordinance until June 1, 2014, the Board finds it unnecessary to enter an Order
5 of Invalidity.
6

7 **VI. CONCLUSIONS**

- 8
- 9 1) Petitioners' allegations that the Ordinance violates RCW 36.70A.070(5), RCW
10 36.70A.020(2), RCW 36.70A.020(10), RCW 36.70A.177, RCW 36.70A.020(1),
11 and RCW 36.70A.020(11) are time-barred. These allegations are **dismissed**.
- 12 2) Petitioners abandoned their allegation that PCC 18.130.020A.4.a violates the
13 GMA and the allegation is **dismissed**.
- 14 3) Petitioners have failed to carry their burden to show that placement or type of
15 signage is "urban sprawl." Those allegations of "visual urban sprawl" are
16 **dismissed**.
- 17 4) Petitioners have not met their burden to show that the Ordinance amended the
18 Graham Community Plan's regulations limiting electronic signage in the Graham
19 rural area. The allegation that the Graham Community Plan signage regulation
20 violates the GMA is **dismissed**.
- 21 5) Petitioners have failed to meet their burden to show amendments to the signage
22 regulation in the urban growth area in Graham's community and other community
23 plan areas violates the GMA. The Petitioners' allegation that Pierce County failed
24 to meet "visual compatibility" requirements for urban areas is **dismissed**.
- 25 6) The Board finds the Ordinance provisions allowing electronic message boards in
26 the non-community plan rural areas **fails to comply** with RCW 36.70A.130(1)(d),
27 and Ordinance No. 2013-30s2 is clearly erroneous in view of the entire record
28 before the Board and in light of the goals and requirements of the GMA. The
29 Board **remands** the Ordinance to the County to bring its signage regulations for
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1 the non-community plan rural areas into compliance with the rural character
2 provisions of the GMA.

- 3 7) Petitioners have not carried their burden to prove that allowing the PALS Director
4 to have limited discretion to authorize variance requests is inconsistent with the
5 Pierce County Comprehensive Plan. These allegations are **dismissed**.
6
7 8) The Board finds that County provisions regarding allowing nonagricultural use of
8 open space lands are not ripe for review. Petitioners' allegations are **dismissed**.
9
10 9) The Board finds Petitioners have not met their burden to show that the
11 reformatted residential density tables allow "clustering" inconsistent with the
12 County's Comprehensive Plan. Petitioners' allegations are **dismissed**.
13
14 10) The Board finds that Petitioners have not met their burden to prove that amended
15 setbacks are inconsistent the County's Comprehensive Plan. Petitioners'
16 allegations are **dismissed**.
17
18 11) The Board finds Petitioners have failed to meet their burden to show amended
19 parking variances are inconsistent with the County's Comprehensive Plan.
20 Petitioners' allegations are **dismissed**.
21
22 12) The Board **declines** to enter an Order of Invalidity.

23 VII. ORDER

24 Based upon review of the Petition for Review, the briefs and exhibits submitted by the
25 parties, the GMA, prior Board orders and case law, having considered the arguments of the
26 parties, and having deliberated on the matter, the Board orders:

- 27 • The Ordinance provisions allowing electronic message boards in the non-
28 community plan rural areas **fail to comply** with RCW 36.70A.130(1)(d), and
29 Ordinance No. 2013-30s2 is clearly erroneous in view of the entire record before
30 the Board and in light of the goals and requirements of the GMA. The Board
31 **remands** the Ordinance to the County to bring its signage regulations for the non-
32

community plan rural areas into compliance with the rural character provisions of the GMA.

- All other allegations of Petitioners are **dismissed**.
- The Board sets the following schedule for the County's compliance.⁵⁸

Item	Date Due
Compliance Due	June 27, 2014
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	July 11, 2014
Objections to Finding of Compliance	July 25, 2014
Response to Objections	August 4, 2014
Compliance Hearing – Telephonic Call 1-800-704-9804 and use pin 4472777#	August 11, 2014 10:00 a.m.

SO ORDERED this 28th day of April 2014.

Cheryl Pflug, Board Member

Margaret Pageler, Board Member

Raymond Paoletta, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.⁵⁹

⁵⁸ Pursuant to WAC 242-03-910, the County may file a motion requesting an expedited compliance hearing if it has taken action to comply with all or part of the Board's order prior to expiration of the time set for compliance.

⁵⁹ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1); WAC 242-03-840.

A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.